

## HOUSE BILL NO. 340

INTRODUCED BY C. YOUNKIN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS GOVERNING THE CONTENTS OF LOCAL SUBDIVISION REGULATIONS; REQUIRING THE SUBDIVIDER TO RESERVE WATER RIGHTS FOR ~~SURFACE WATER~~ OR ESTABLISH A LANDOWNER'S WATER USE AGREEMENT FOR CERTAIN SUBDIVISIONS; ESTABLISHING MINIMUM WIDTH REQUIREMENTS FOR DITCH EASEMENTS IN SUBDIVISIONS; PROHIBITING PLACEMENT OF STRUCTURES OR PLANTING OF VEGETATION WITHIN DITCH EASEMENTS WITHOUT PERMISSION; ~~AUTHORIZING THE GOVERNING BODY TO ADOPT STANDARDS AND PROCEDURES RELATED TO LAND USE DENSITY;~~ REQUIRING THE SUBDIVIDER TO SHOW UTILITY EASEMENTS OF SUFFICIENT WIDTH TO PROVIDE UTILITY SERVICES ON THE FINAL PLAT; AND AMENDING SECTIONS SECTION 76-3-504 ~~AND 76-3-511~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. ~~Minimum requirements for subdivision~~ Subdivision regulations -- contents.** ~~(1)~~ The subdivision regulations adopted under this chapter must, at a minimum:

~~(1)(a)~~(1) except as provided in 76-3-210 or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

~~(2)(b)~~(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

~~(3)(c)~~(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

~~(4)(d)~~(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

~~(5)(e)~~(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

~~(6)(f)(6)~~ prescribe standards for:

~~(a)(i)(A)~~ the design and arrangement of lots, streets, and roads;

~~(b)(ii)(B)~~ grading and drainage;

~~(c)(iii)(C)~~ subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

~~(d)(iv)(D)~~ the location and installation of utilities;

~~(7)(g)(7)~~ provide procedures for the administration of the park and open-space requirements of this chapter;

~~(8)(h)(8)~~ provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

~~(i)(9)~~ when a subdivision creates parcels ~~containing~~ WITH LOT SIZES AVERAGING less than ~~20~~ 5 acres, require the subdivider to:

~~(i)(A)~~ reserve all ~~surface~~ OR A PORTION OF THE APPROPRIATION water rights OWNED BY THE OWNER OF THE LAND TO BE SUBDIVIDED and transfer the water rights to a single entity for use by landowners within the subdivision who have ~~access~~ A LEGAL RIGHT to the water AND RESERVE AND SEVER ANY REMAINING SURFACE WATER RIGHTS FROM THE LAND; ~~or~~

~~(B)~~ IF THE LAND TO BE SUBDIVIDED IS SUBJECT TO A CONTRACT OR INTEREST IN A PUBLIC OR PRIVATE ENTITY FORMED TO PROVIDE THE USE OF A WATER RIGHT ON THE SUBDIVISION LOTS, ESTABLISH A LANDOWNER'S WATER USE AGREEMENT ADMINISTERED THROUGH A SINGLE ENTITY THAT SPECIFIES ADMINISTRATION AND THE RIGHTS AND RESPONSIBILITIES OF LANDOWNERS WITHIN THE SUBDIVISION WHO HAVE A LEGAL RIGHT AND ACCESS TO THE WATER; OR

~~(ii)(C)~~ reserve and sever all ~~ANY REMAINING~~ ALL surface water rights ~~THAT ARE NOT RESERVED UNDER~~ SUBSECTION (9)(A) from the land;

~~(9)(i)(10)~~ except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision; that are in locations of appropriate topographic characteristics and sufficient width; to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated

water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; ~~are at least 15 feet from each side of~~ A SUFFICIENT DISTANCE FROM the centerline of the ditch TO ALLOW FOR CONSTRUCTION, REPAIR, MAINTENANCE, AND INSPECTION OF THE DITCH; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. Establishment of easements pursuant to this subsection ~~(9)~~ is not required if:

~~(a)(i)(A)~~ the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

~~(b)(ii)(B)~~ the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

~~(10)(k)(11)~~ require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights-;

~~(12) REQUIRE THE SUBDIVIDER TO ESTABLISH, FILE, AND RECORD DESCRIBE, DIMENSION, AND SHOW UTILITY EASEMENTS IN THE SUBDIVISION THAT ARE IN LOCATIONS OF APPROPRIATE TOPOGRAPHIC CHARACTERISTICS AND ON THE FINAL PLAT IN THEIR TRUE AND CORRECT LOCATION. THE UTILITY EASEMENTS MUST BE OF SUFFICIENT WIDTH TO ALLOW THE PHYSICAL PLACEMENT AND UNOBSTRUCTED MAINTENANCE OF UTILITY FACILITIES FOR THE PROVISIONS PROVISION OF UTILITY SERVICES WITHIN THE SUBDIVISION. THE FILED AND RECORDED UTILITY EASEMENTS MUST BE IN THE SAME LOCATIONS AS THOSE DESCRIBED IN THE PRELIMINARY PLAT.~~

~~(2) (a) Subject to subsection (2)(b), if a growth policy has been adopted pursuant to 76-1-601 that includes a map that specifies density of land use, in order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under this chapter may prescribe standards or procedures~~

~~governing land use density, including lot area, density of land use for specific geographic areas within the jurisdictional area, averaging of density standards, transferring of density standards, or granting and administering density bonuses.~~

~~—— (b) Any standards or procedures established pursuant to subsection (2)(a) must be consistent with any zoning regulations adopted for the jurisdictional area under chapter 2 of this title."~~

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7 ~~——~~ **Section 2.** Section 76-3-511, MCA, is amended to read:

8 ~~——~~ **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except  
9 as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt  
10 a rule under 76-3-501 or 76-3-504(6)(c)(1)(f)(iii) that is more stringent than the comparable state  
11 regulations or guidelines that address the same circumstances. The governing body may incorporate by  
12 reference comparable state regulations or guidelines.

13 ~~——~~ (2) The governing body may adopt a rule to implement 76-3-501 or 76-3-504(6)(c)(1)(f)(iii) that  
14 is more stringent than comparable state regulations or guidelines only if the governing body makes a  
15 written finding, after a public hearing and public comment and based on evidence in the record, that:

16 ~~——~~ (a) the proposed local standard or requirement protects public health or the environment; and

17 ~~——~~ (b) the local standard or requirement to be imposed can mitigate harm to the public health or  
18 environment and is achievable under current technology.

19 ~~——~~ (3) The written finding must reference information and peer-reviewed scientific studies contained  
20 in the record that forms the basis for the governing body's conclusion. The written finding must also  
21 include information from the hearing record regarding the costs to the regulated community that are  
22 directly attributable to the proposed local standard or requirement.

23 ~~——~~ (4) (a) A person affected by a rule of the governing body adopted after January 1, 1990, and  
24 before April 14, 1995, that that person believes to be more stringent than comparable state regulations  
25 or guidelines may petition the governing body to review the rule. If the governing body determines that  
26 the rule is more stringent than comparable state regulations or guidelines, the governing body shall comply  
27 with this section either by either revising the rule to conform to the state regulations or guidelines or by  
28 making the written finding, as provided under subsection (2), within a reasonable period of time, not to  
29 exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner  
30 of the duty to comply with the challenged rule. The governing body may charge a petition filing fee in an

1 ~~amount not to exceed \$250.~~

2 ~~—— (b) A person may also petition the governing body for a rule review under subsection (4)(a) if the~~  
3 ~~governing body adopts a rule after January 1, 1990, in an area in which no state regulations or guidelines~~  
4 ~~existed and the state government subsequently establishes comparable regulations or guidelines that are~~  
5 ~~less stringent than the previously adopted governing body rule."~~

6 ~~- END -~~